

Corp. Tax Determinations
A-2
Mark & Newman Company, Inc.
STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BOARD OF CONFEREES - CORPORATION TAX BUREAU

In the Matter of the Application of :

MARK & NEWMAN COMPANY, INC. :

Hearing Case No. 6521

for revision or refund of franchise tax :
under Article 9-A of the Tax Law for the :
fiscal year ended October 31, 1964. :

Taxpayer had originally filed a return for the fiscal year ended October 31, 1964 without availing itself of a business allocation percentage. An application for revision or refund claiming an allocation was timely filed on October 6, 1965. A Board of Conferees report dated November 19, 1965 allowed the taxpayer a regular place of business in Florence, Italy, and the tax was recomputed as follows:

Entire net income	\$380,280.60
Business allocation	80.8753%
New York base	307,553.84
Tax at 5½%	16,915.46
Tax paid	20,915.43
Reduction	\$ 3,999.97

On January 12, 1968 taxpayer deposited in a New York City post office a new application for revision or refund for the fiscal year ended October 31, 1964 to be forwarded to Albany by certified mail. The application was placed in the mails less than three years after the January 15, 1965 due date for the fiscal year ended October 31, 1964 return and, accordingly, was timely filed.

On the current application for revision or refund, taxpayer claims that orders for the goods shipped to customers outside New York State are both received and accepted outside the state and none of such receipts are allocable to New York (50% of such receipts had been allocated to New York in the prior Board of Conferees report mentioned above). The amended business allocation schedule attached to the current application reflects a sharp decrease in the wage factor from 94.9095% to 35.809%.

Because of the sharp drop in the wage factor, it was decided to refer the matter to the New York district office for a verification field audit. In the interim, the taxpayer filed timely claims for refund for the fiscal years ended October 31, 1965 and October 31, 1966.

The field audit report covers the fiscal years ended October 31, 1964 through October 31, 1967 and the taxpayer has signed a consent to the findings. The field examination confirms that 50% of the shipments to customers outside New York are allocable to New York. The orders are deemed to be received or accepted in New York since taxpayer has no permanent or continuous place of business elsewhere. The sharp drop in the wage factor was accounted for by the fact that the taxpayer had originally allocated to New York, wages of salesmen who reside outside the state and perform their duties outside. Such wages are not allocable to New York.

Based on the agreed field audit findings, it is recommended that taxes be recomputed as follows:

	<u>10/31/64</u>	<u>10/31/65</u>	<u>10/31/66</u>	<u>10/31/67</u>
Entire net income	\$380,280.60	\$531,144.53	\$952,848.66	\$1,173,329.00
Business allocation %	62.7341	63.0674	63.8772	57.2385
New York base	238,565.61	334,979.05	608,653.04	671,595.92
Tax at 5 1/2%	13,121.11	18,423.85	33,475.92	36,937.78
Previous tax	16,915.46	23,463.40	41,944.00	27,033.00
Reduction in tax	3,794.35	5,039.55	8,468.08	
Added tax				9,904.78

/s/

M. F. SULLIVAN

Chairman

/s/

J. J. CENEVICH

JJG:MB
11/14/68

Approved
E. A. DOWAN

Approved
T. B. MANLEY 11/21/68

O.K. JHM 11/22/68